(1)

Supreme Court, U.S.
FILED

03 824 OCT 23 2003

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

In re: Cindy L. Naething

On Writ of Certiorari to the
United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Cindy L. Naething Pro se:
P.O. Box 50250
Bowling Green, KY 42102
Phone No. 817-689-6925

54 AP

QUESTIONS PRESENTED FOR REVIEW

1. Is it abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or other wise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment, might be denied by state agencies?

2. Is Congress determined to stamp out widespread violations of constitutional rights at virtually any cost, in which imposed liability even on persons who simply failed to prevent certain violations?

3. If the *district and appellate judges,* in deciding whether laws are constitutional, are to be left to the admonitions of their consciences, why was it the Founders gave us a written Constitution at all?

4. May *federal and appellant judges* refuse to perform a mandatory duty a non-discretionary duty under the due process law where a remedy could have been provided? To put a halt to the personal and financial harm arising from federally protected rights, in this case that has commenced shortly after September 3, 2001.

5. May *federal appellate judges* enlarge on such a violation of the constitutional due process, and take such advantage of a citizen when they knowingly and repeatedly violate clear and settled laws and constitutional protections, when they continue to conflict great personal and financial harm to a citizen, all to protect the corruption of former actions?

6. May *federal judges* use their judicial positions to inflict harm to a citizen by ignoring the issues put before them for not exercising constitutional due process remedies against violations of civil and constitutional rights occurring under state law and under federal law?

7. May a court just dismiss a complaint and cut a person off at the face of 'brutal need' with out the proper procedure guaranteed by the constitutional rights, by just ignoring facts stated in complaint that there was more material evidence that could be provided and would have been consistent with the allegations. May these courts just ignore these facts that would entitle a person relief under (42 USC 1983)?

8. May *Supreme Court justices* take meaningful corrective actions when district judges deprive a person of their liberty and property interest, who has been adversely affected by state actions. Does due process prohibit government infringement of liberty interest?

PARTIES TO THE PROCEEDING

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

CINDY L. NAETHING Pro Se: PETITIONER
P.O.BOX 50250
BOWLING GREEN, KY 42102

V.

DIRECTOR, LEE COVINGTON. Et al RESPONDENT
OHIO DEPARTMENT OF INS.
2100 STELLA COURT
COLUMBUS, OHIO 43215

And

AMERICAN GENERAL LIFE AND RESPONDENT
ACCIDENT INSURANCE CO.
AMERICAN GENERAL CENTER
NASHVILLE, TENNESSEE

TABLE OF CONTENTS

Questions Presented	-i -ii
Parties to the Proceeding	-iii-
Table of Contents	-iv-
Table of Appendix	-v-
Table of Authorities	-vi-
Basis for Jurisdiction	-1-
Statutory & Const. Provisions	-1-
Statutory & Const. Provisions	-2-
Citations to Dist. & App. Decisions	3-4
Statement of Case	5-6
Summary Argument	6-7
Argument	7-28
Reasons for Allowing Writ	28-29
Conclusion	-30-

TABLE OF APPENDIX

	Page
Appendix A-Opinion and judgment of the District Court dismissing complaint dated October 24,2001.	1a-2a
Appendix B-Opinion and order from ultimately dismissal of complaint from October 24, 2001.	3b
Appendix C-Opinion from District Court still dismissing complaint of October 24, 2001.	4-6c
Appendix D-Order from District Court denying plaintiff's motion for recusal.	6-8d
Appendix E-Judgment entry from District Court granting defendants motion to dismiss case.	8e
Appendix F-Order filed June 25, 2002 referring matter to a hearing panel of the court.	9f
Appendix G-Order of August 30, 2002 denying appellants motion to deny O.D.I.'S brief.	10g
Appendix H-Order of June 20,2003 scheduling the case for submission to the courts on brief's of parties.	11h
Appendix I-Order filed July 10, 2003 that motions will be conferred until panel confers on July 29, 2003.	12i
Appendix J-Order filed August 20, 2003. Court of Appeals dismissing case and affirming District Court orders.	13-15j
Appendix K-Opinion of Court of Appeals from September 19, 2003. denying appellants motion for review.	15k
Appendix L-Mandate order from United States Court of appeals filed on September 29, 2003	16l

TABLE OF AUTHORITIES

CASES	*PAGE*
Hansberry v. Lee 311 U.S. 32, 37.....	10
Jason Richards, ET & AL v. Jefferson County .... ET & AL 517 U.S. 793; 116 S. Ct. 1761 135 L.Ed.	10
Scheurer Administratix v. Rhodes, Govenor of Ohio ET &AL 416 U.S. 232 40 L. Ed 2d. 90 (1974).....	13
Monell v. New York City Dept. of Social Services... 436 U.S. 658 56 L. Ed. 2d 611.....	13
City of Independence, 445 U.S. 622, 650.....	13
Green v. Mc Elroy ET & AL 360 U.S. 474.....	16
Wood v. Strickland 420 U.S. 308, 322.....	17
Screws v. United States.....	17
Griffin v. Breckenridge ET & Al 403 U.S. 88.....	18
Carroll ET & Al v. Pres. & Comm. Of Princess Anne 395 U.S. 175.....	18
Winget v. Rockwood 8 Cir. 69 F. 2d 326, 329.....	20
United States v. price ET &AL 383 U.S. 787.....	24
Mitchum Bookmart v. Foster ET & AL 407 U.S. 225	24
Haines v. Kerner ET & AL 404 U.S. 519.....	28
Maine v. Thiboutot 448 U.S. 1.....	29
Kennedy v. Mendoza-Martinez, 372 U.S. 144.....	29
Lake Carrier's Ass v. MacMullan 406 U.S. 498.....	29

Petitioner Cindy L. Naething, respectfully request a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit which was entered in this case Aug 20, 2003 with rehearing being denied on September 19, 2003.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit entered on September 19, 2003. The order is found in Appendix. (App. J.). The order of the United States Court of Appeals for the Sixth Circuit denying rehearing dated September 19, 2003 is found in Appendix. (App. K.).

BASIS FOR JURISDICTIION

On October 24, 2001 the District Court for the Northern District of Ohio entered a judgment which is subject to this appeal. Notice of Appeal was filed October 29, 2001 to the United States Court of Appeals.

The jurisdiction of the Supreme Court of the United States to review this decision of the United States Court of Appeals for the Northern District of Ohio on appeal is conferred by Title 28 U.S.C., Section 1257 (2).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Statutory and Constitutional provisions in the Sixth Circuit District and Appellant Court orders denying petitioner due process of law under the fifth and fourteenth amendment of the United States Constitution.

Title 28 U.S.C. 2101, under sections (b), (c), and (e), because of the public importance relating to the Sixth Circuit misuse of the federal courts district and appellant judges have.

Misused Sixth Circuit district and appellant courts in the covering up of the corruption thus far, and engaged in the pattern of subverting the laws of the constitution of the United States, and the taking advantage of a person where it has been clear she was not able to perfectly plead her claim.

Obstructing justice, by refusing to exercise their duties to plaintiff the relief to which she was entitled. Whether legal, equitable or both. Ohio law Appeal & Error 1080 C.J.S. Appeal & Error 837 et seq.

Rendered orders ignoring the clearly shown evidence of fraud, denying to petitioner the equal protection under the law and the due process of law.

Inflicted more great personal and financial harm on to the petitioner for not exercising the due process remedies available under the constitutional laws. Petitioner had exercised the constitutional due process rights in her complaint to defend against the judicially inflicted civil and constitutional violations. The wrong full acts that exposed these activities are also federal offences under Title U.S.C. 241.

Title 42 U.S.C. 1986, relating to responsibilities of any person, including federal judges, to halt in this case close to record-setting violations that have in the last twelve years now, deprived a person of a normal life. These constitutional acts have been repeatedly perpetrated not only by judges whom this court has supervision over, but by many other actions that have not been exposed.

Title 28 U.S.C. 1331. Right to federal remedies for violations of federally protected rights.

Title 28 U.S.C. 1343. Right to federal court access for relief against violations of constitutional rights.

Title 42 U.S.C. 1983-1988. Right to have federal judges order a halt to the scheme to strip petitioner of assets that funded her exposure of the activities in government offices of the Sixth Circuit courts.

Supreme Rule 10 (a) explaining that the Justices of the United States Supreme Court have responsibilities over lower federal courts."A petition for writ of certiorari will be granted... When lower courts has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by the lower court, as to call for an *exercise of this Court's supervisory power."*

Supreme Court Rule 11, certiorari to the United States Supreme Court before judgment.

Citations of District and Appellant Court Decisions

Order filed October 24, 2001, rendered by James G. Carr judge for the District Court of the North Western District Court of Ohio dismissing plaintiff's complaint as moot. Appendix A. Case no. 3:01CV 7452.

Order by judge James G. Carr vacating in part plaintiff to have the chance to reply to defendants motion to dismiss by November 19, 2001. Appendix B.

Order by judge Carr still granting motion to dismiss. App. C.

Order rendered by judge James G. Carr denying plaintiff's motion for him to recluse. Appendix D.

Judgment entry filed by James G. Carr ordering for reasons filed on December 14, 2001. defendants motion to dismiss is hear by granted. Case closed. Appendix E.

Order rendered June 25, 2002 from United States Court of appeals. Case no. 01-4189 that the motion to dismiss was before a hearing panel of the court. Appendix F.

Order filed in the United States Court of Appeals on August 30, 2002 denying appellants motion to deny defendant Ohio Department of Insurance's brief. Appendix G.

Order filed July 29, 2003 that the case is scheduled for submission to the court on the briefs of the parties. App. H.

Order filed July 10, 2003 under consideration of appellee's motion to dismiss; and appellants motion to clarify, it is hereby ordered a ruling on these motions will be deferred until the panel confers on July 29, 2003. Appendix I.

Order rendered on August 20, 2003 that United States Court of Appeals affirms the judgment of the district court in its opinion and order. Appendix J.

Order filed from United States Court of Appeals on Sept 19, 2003 denying petitioner review of the case. Appendix K.

Order and Mandate filed on September 29, 2003 from the United States Court of Appeals. Appendix L.

Statement of the Case

Petitioner Cindy L. Naething who now resides in Kentucky, filed her complaint on August 28, 2001. for the purpose of finally obtaining some relief under statute 42 USCS 1983 and 1985. (3). Civil Rights; U.S.C. 2000(3) Title VII-Discrimination). Petitioner alleged true facts that she had been conspired against and prevented in all those years from obtaining the documents she was entitled to as being the beneficiary on the two insurance policies before she was defrauded.

The United States District Court for the North Western District of Ohio held that plaintiff lost a discovery action in Richland County Ohio, and cannot relitigate issues under that case under the doctrines of collateral estoppels and res judicata. The Court held that the statute of limitations was two years in a civil rights case. Also stated the defendant insurance company was not a state actor. The Court held that the State Dept. of Insurance seeks dismissal on the doctrine of sovereign immunity. Also that the argument need not be addressed because the complaint fails for want of specificity to state a claim is well taken. The court held that her allegations fail to show any right protected under the Constitution and laws of the United States have been violated.

Petitioner filed her appeal on October 29, 2001 in the United States Court of Appeals for the North Western District of Ohio; arguing the district court violated her 14th amendment rights by dismissing her complaint before plaintiff had the chance to respond to defendant American General's motion to dismiss complaint. And this was another violation of the due process and equal protection under the law. Petitioner then had to immediately file a motion to deny American General's motion to dismiss after she had already appealed because of the district court closing of the case prematurely as moot.

The United States Court of Appeals held on Aug 20, 2003 that an action in the Ohio State Court ruled that plaintiff had received the entire discovery she was entitled to. For the reasons articulated by the district court AGLA is not a state actor. Held that the claims against

Director Lee Covington fail for want of specificity and that the claim fails to allege sufficiently that a right protected under the Constitution or laws has been violated. Basically agreed with the district court.

On September 19, 2003 the United States Court of Appeals denied a review of the case. Denied the review because of the appellant's motion to inform the United States Court of Appeals of possible appeal construed as a petition for rehearing.

Summary of Argument

42 U.S.C. Section 1983 and 1985, providing for a cause of action for deprivation of any rights. Section 1983 provides in full: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the laws of the Constitution, shall be liable to that party injured in an action of law, suit in equity, or other proper proceeding for redress."

Section 1985 provides for a cause of action against persons who conspire for the purpose of depriving, either directly or indirectly, any person the equal protection of the laws or equal privileges and immunities under the laws-covers concerted action by as few as two persons and does not require interstate much less nationwide. The property owners have the right under the federal Constitution not to have the government physically occupy their property without due process of law or without just compensation.

Although the legislature may distinguish between individuals on the basis of their need or ability, it is presumptively impermissible to distinguish on the basis of an unalterable identifying trait over which the individual has had not control and for which he or she has been disadvantaged by the law.

"Certain principles have remained immutable in our jurisprudence. One of these that where action seriously injures an individual, and the reasonableness of the action depends on the fact-findings, the evidence used to prove the Government's case must be disclosed to the individual so she has the opportunity to show it is true or untrue. While this is important in the case of documentary evidence, it is even more important where evidence consist of the testimony of individuals whose memory might be faulty or who, in fact, might be perjures motivated by malice, vindictiveness, intolerance prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment...Some Court's have been zealous to protect these rights from erosion. It is spoken not only in criminal cases... but also in all types of cases even administrative...actions where under scrutiny."

The mandate of the Fourteenth Amendment that no state shall deprive any person of life and liberty without due process of law is a direct, traditional concern of the Federal Government; a decision interpreting a federal law in accordance with its historical design, that is, to punish denials by state action of constitutional rights of a person, cannot be regarded as adversely affecting the wise adjustment between state responsibility and national control.

Argument

Petitioner filed her complaint action in the Federal District Court under 42 USCS 1983, which provides for a civil action against any person who deprives another under the color of state law. And 42 USCS 1985 (3) providing a cause of action for persons who conspire for the purpose of depriving, either directly or indirectly, any person or class of person's equal protection of the laws or equal privileges and immunities under the laws. These are violations of her constitutional fifth and fourteenth amendments.

Reduced to the simplest terms, the claim which plaintiff stated she was the beneficiary on these two insurance policies and in the event of Martin Hampton's death was entitled to the proceeds. That the Defendant the Ohio Department of Insurance had promised on different occasions to take the proper proceedings in finding out what happened and how she was removed as beneficiary, buy subpoena of the records from American General. In addition, because of the numerous attempts from the year 1991 through 2001 she was forced to resort to naming them in the complaint.

Petitioner's complaint provided in exhibits an internal document that stated Cindy Naething was beneficiary but had been removed. Proof right there she was at one time the beneficiary. "Clear Point." Petitioner provided a change form on the one policy that shows only one thing and that is the forgery, with explanation to how that took place. There was also in exhibit's a letter provided to me where the O.D.I. had written the company in April 1994 requesting various documents, with an explanation of how they had promised me in March of 1994 to subpoena the records, and I would be provided the entire file. Petitioner also stated she had much more material evidence if this was to be heard.

Petitioner alleged that the basis of the conspiracy was the failure of the defendant to adequately provide me with the representation I deserved. To follow up with the promises made. And to do their duties by law. Ohio Administrative Code Rule and Statute 3999,41. They had an obligation to investigate the matter of fraud, in which they did do but hid the facts from me. In all of these acts, a remedy was available.

Petitioner provided much more than the prima facie requirement under 1983: She alleged that these defendants had deprived her in pursing the fraud issues and had conspired to prevent her from having the documents that would prove the fraud. And USC 1983 and 1985 provides for a remedy for actions under color of law, which contravene the federally protected rights, whether those rights derive from the federal statute or the constitution. It is clear the documents would have

been the remedy. The only remedy she has requested that has deprived her of another two years. A simple request in a complaint that had to have been completely ignored.

In this case that was brought before the United States District Court of Ohio the petitioner has much more than a "legitimate claim of entitlement" to a constitution- ally protected liberty and property interest that has been threatened by erroneous state actions in all these years, in preventing a person from proving fraud existed. A situation that has caused a person to literally wonder how they are alive.

Then when petitioner was able to get a complaint filed in the United States District Court to the best of her ability the district judge number one jumps on the chance to dismiss the claim. First violation of her constitutional rights by dismissing the claim untimely in which could of possibly been a simple mistake. Even though it would be real hard for me to believe that, in all the reasons for dismissing the complaint, it is very unlikely my complaint was looked at very seriously.

Dismissal of complaint by District Judge Carr for unspecified civil rights, count one simply untrue, petitioner was very specific that she had been deprived of the documents that would do only one thing. And that is prove the fraud. Petitioner not only filed her complaint under USC 1983 and 1985, but (42 USCS 2000) et seq.

Dismissal of the claim by District Judge that she lost an action for discovery in the Richland County Ohio Common Pleas. Did he abuse his discretion on that issue when the complaint had already stated the documents had not been provided to her. Did he bother to even consider the fair and proper procedure plaintiff was entitled to before cutting me off at a time of brutal need. And trying to find out why I was even in his court in the first place. Petitioner strongly feels this judge abused his discretion in not grasping the matters and issues before him, that there was a possibility that this person had not been given the fair opportunity procedurally, substantively, and evidentially to pursue her claim the first time. Or what the reasons where these documents had not been provided.

An action in a court of law that should have never existed if the state entity would of done their duties by law. Did this judge even consider that due to the alleged conspiracies was the same situation in 1995.

In ***Hansberry v. Lee,*** **311 U.S. 32, 37, 85 L. Ed. 22, 61 S. Ct. 115,** *we held that it would violate the Due Process Clause of the Fourteenth Amendment to bind litigants to a judgment in an earlier litigation to which they where not parties and in which they where not adequately represented. The decision of the Supreme Court of Alabama said that what we review today presents us with the same basic question in some what of a different context. See* ***Jason Richards, Et Al, v. Jeferson County Alabama, Et Al*** **517 U.S. 793; 116 S. Ct. 1761 135 L. Ed. 2d 76 (1996).**

Appeal & Error 1057.5 (2) Judgment 77 (3) Under the doctrine of mutalily estoppel, unless both parties (or their privies) in a second action are bound by judgment in a previous case, neither party (or its privy) in a second action may use the prior judgment as determination of an issue in the second action.

In ***Jason Richards, Et Al, v. Jefferson County Alabama, Et Al,*** **517 U.S. 793.** *It was said " We are not concerned with the rights of the plaintiff on the merits, although it may be observed that the plaintiff's claim is one arising under the Federal Constitution and, consequently, one of which the opinion of the state court is not final...Our present* concern is soley with the question whether the plaintiff has been accorded due process in the primary sense,--whether it has had the opportunity to present its case and be heard in its support...While it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person all the existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

In this case, there has been allegations of state actions which, beyond dispute, brings the conspiracy within the ambit of the Fourteenth Amendment.

It is an allegation of official, state participation in preventing a person from taking the proper actions in a fraud case they where well aware of since at the least the year 1992. It is an allegation of the state and through its officers with participation of others without the semblance of the due process of law as required by the Fourteenth Amendment, used its sovereign power and office to hide and protect the fraud and parties involved.

The district court erred in dismissing the complaint by summarily adjudicating the claim of promissory estoppel and res judicata where genuine issues of material fact remained for adjudication. And so far as the latches concerned, it has been repeatedly held that mere lapse of time does not constitute latches. "It is to be determined by consideration of justice, and that is dependent upon the circumstances of each case." In this case the plaintiff had not only the proper representation in her 1995 action, in depriving her of her rights but was no doubt being conspired against and not only the conspiracies under color of state law, but also purely private conspiracies, that the district court abused in its discretion to further find out by denying her the due process of law.

"It is immaterial to the conspiracy that any of these private individuals where not acting under color of law" because the count charges that they where conspiring with persons who where so acting."

The district court erred by dismissing the complaint that the state defendant the Ohio Department of Insurance seeks sovereign immunity. The concept of immunity of government officers from personal liability springs from the same roots considerations that generated the doctrine of sovereign immunity. While the later doctrine- that the "King can do no wrong"-did not protect all government officers from personal liability. The common law soon recognized the necessity of permitting officials to perform their official functions free from the threat of suits for personal liability.

Official immunity apparently rested, in its genesis, on two mutually dependent rationales: (1) the injustice, particularly in the absence of bad faith, or subjecting to liability an officer who is required, by legal obligations of his position, to exercise discretion; (2) the danger that the threat of liability would deter his willingness to execute his office with the decisiveness and the judgment required by public good.

The conduct of the defendant as described above was done with a conscience disregard of plaintiff's rights, had a great probability of causing more substantial harm to plaintiff than it has, and was done with negligently, willfully, and/or intentionally, an proximately causing plaintiff severe and extreme emotional distress, embarrassment, humiliation, mental and financial anguish.

This is a case where a attorney told petitioner close to seven years ago that this was not a case for the news papers, it was for current affair. Can one imagine what any one would think if I was ever allowed to prove these allegations. No not allegations but facts. And then for this case to have to end up in the higher courts first the federal district and then the united states court of appeals. For them to just ignore the injustice that has occurred, and let a person be deprived of another two years of normal life. Especially when the person was only requesting the documents she was entitled to. And only wanting to put a halt to the conspiracies.

There is no way res judicata could stand in these circumstances where a person has been conspired against over and over again in seeking justice. And this state entity named was a huge participant in preventing justice. There could not be an issue any more troublesome or more apt for litigation than this one here of the factual issues that where involved in the previous.

The federal constitutional violation actionable under 42 USCS 1983 for a state's violation of the right to the procedural due process-which right is protected by the guarantee of fair procedure secured by the due process law clause of the Federal Constitution's Fourteenth Amendment-is not complete when states deprivation of life, liberty, or property occurs.

Such violation is not complete unless and until the state fails to provide due process; to determine whether such violation has occurred, it is necessary to ask what process the state provided and whether it was constitutionally adequate, and such inquiry should examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation and any remedies for erroneous deprivations provided by statute of tort law.

In the case of ***Scheurer, Administratix v. Rhodes, Governor of Ohio Et Al*** **416 U.S. 232 94 S Ct. 1683 40 L. Ed. 2d 90 (1974).** *Stated we intimate no evaluation whatever as to the merits of the petitioners' claims whether it will be possible to support them by proof. We hold only that, on allegations of their respective complaints, they where entitled to have them judicially resolved. The complaining parties are entitled to be heard more fully than is possible on a motion to dismiss a complaint.*

The district court also dismissed plaintiff's claim for want of specificity and petitioner argues that because subjecting claims against municipalities under 42 USCS 1983 to the specificity requirement for complaints under Rule 9(b) of the Federal Rules of civil procedure is a result that must be obtained by the process of amending the Federal Rules, and not by judicial interpretation; in the absence of such amendment, federal courts and litigants must rely on summary judgment and control of discovery to weed out unmertorious claims sooner than later.

A federal court may not apply a "heightened pleading standard"- more stringent than the usual pleading requirements of Federal Rule of Civil Procedure 8(a)-in civil rights cases alleging municipal liability under 1983. First the heightened standard cannot be justified on the ground that a more relaxed pleading standard would eviscerate municipalities,' immunity from suit by subjecting them to expensive and time-consuming discovery in every 1983 case, see ***Monell v. New York City Dept. of Social Services,*** **436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018,** do not enjoy absolute qualified immunity from 1983 suits, *id* at **701; *City of Independence,* 445 U.S. 622, 650, 63 L.Ed.**

2d 673, 100 S. Ct. 1398. Second, it is not possible to square the heightened standard applied in this case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." And while Rule 9(b) requires greater particularity in pleading certain actions, it does not include among the enumerated actions any reference to complaints alleging municipal liability under 1983. Pp

CIVIL RIGHTS 12.5
Remedy for deprivation—

Head note: 10
The purpose of the federal civil rights statute (42 USCS 1983) authorizing an action at law, suit in equity, or other proper proceedings for redress of the deprivation, under color of state law, of rights secured by the Federal Constitution and federal laws, is to interpose the federal courts between states and the people, as guardians of the people's federal rights, and thus to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial; in carrying out this purpose Congress, by expressly authorizing a suit in equity as one of the means of redress, has plainly authorized the federal courts to issue injunctions in 1983 actions.

Further petitioner alleged specifically in her complaint that she was at one time the beneficiary on these two insurance policies and provided documentation to show fraud existed. She alleged how she had been promised by O.D.I. that they would file suit finally in 1994 to get the file from the insurance company, and she would receive the entire file. In which never happened. Then close to two years later was advised they had gotten the policies and all from the company, but would decide what they would let me see.

Another reason for the district court dismissal of plaintiff's complaint was the defendant American General was not a state actor.

Another simple far from being the case when it is clear that the Co. has offices and does business in nearly every City in Ohio. In the case of ***Mc Gee v. International Life Insurance Co.*** **335 U.S. 220; 78 S. Ct. 199; 2 L. Ed. 2d 223; (1957).** In this case on certiorari, the United States Supreme Court reversed the judgment below. Black, J., speaking for eight members of the Court, stated that it was sufficient for purpose of the due process clause that the beneficiary's suit was based on a contract, which had substantial connection with California. It was held that the fact that the California statute was enacted after the defendant had assumed the obligation owed to the insured by its original insurer did not warrant the conclusion that the application of the statute to the defendant involved an impairment of the obligation of contract.

The next count for the district courts dismissal of plaintiff's complaint was that her allegations of misconduct and conspiracies where vague and conclusory and unsupported by material fact. In response to this, how could a federal judge hand down this order? No. (1) Plaintiff had put in her complaint that these defendant's had made the choice to not provide me with the documents to prove the existence of fraud, deprived me of that life, liberty and property rights. A right that is protected under the constitution of laws and the right that has been violated. No. (2). Plaintiff also had in her complaint that she had more material evidence in support of her allegations. For a federal judge to state this has not been a violation of her constitutional rights, and then to not provide her with any other procedures in further proving. Where does the injustice end?

As far as the conspiracies that in this case a person did not even want to allege, but had no choice. Not only had no choice, but also these are facts that there has been a clear conspiracy in preventing her from proving the fraud. That is as clear as night and day. facts that there has been unreasonable governmental interference that comes with the " liberty" and "property" concepts of the Fifth Amendment: that revocation of the security clearance in a proceeding without confrontation and cross-examination was authorized neither by Congress nor by the President, and that, in view of the questionable

constitutionality of the procedure adopted, such authority could not be inferred from acquiescence or nonaction.

Petitioner also contends that these actions not authorized by Congress or the President has severely denied her of her "liberty" and "property" without due process of law in contravention of the Fifth Amendment. The alleged property is the policies she has been deprived of in obtaining her proceeds: the alleged liberty is the petitioners freedom to make a choice in taking the proper actions in being defrauded out of such a large amount of money. Actions that has restrained her from the enjoyment of constitutionally protected rights. Actions that seriously affected petitioner's if not destroyed the ability for this person to have any trust in mankind. Actions that no one could even understand because they have not lived the experience.

In the case of: ***Green v. Mc Elroy ET Al.*** **360 U.S. 474; 79 S. Ct. 1400. 3 L. Ed. 2d 13 77; (1959).** It was noted in Headnote: (2) Same principle as in this case that an employee who has been discharged from his employment soley on the ground that the government revoked his security clearance has standing to bring a suit against the responsible goverment officials and to assert what ever rights he may have, since the defendants actions, directed at the plaintiff as an individual, caused substantial injuries and, where they are the subject of the suit between private persons, could be attacked as an invasion of a legally protected right to be free from arbitrary interference with private contractual relationships and, moreover, plaintiff has the right to be free from unauthorized actions of government officials, which substantially impair his property interest.

CONSTITUTIONAL LAW 827

DISCOVERY AND INSPECTION 13.5
Disclosure by Government.

Headnote: 3

It is immutable principle of jurisprudence that where government actions seriously injures an individual, and the reasonableness for its actions depends on the fact findings, the evidence used to prove the governments case. Documentary must be disclosed to the individual.

N2 Civ. R. 26(B) states:

"Parties may obtain discovery regarding matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to a claim of defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things."

In the case of ***Wood v. Strickland*** **420 U.S. 308, 322** it was held also that a state official is not immune from liability under USC 42 1983 if he knew or reasonably should of known that the action he took in his spere of the official responsibility would violate the constitutional rights of a person affected, or if he took the action with malicious intention to cause deprivation of a constitutional right or other injury to the person.

The decisive answer for the district court dismissing plaintiff's claim for failure of want and specificity to state a claim would be that the Federal Rules of Civil procedure do not require a claimant to set out in detail the facts in which he bases his claim. To the contrary, all the rules require is " a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds he rest. Plaintiff had stated in her claim that she wanted these documents that she had been deprived of in all these years. That one of these entities could provide her with.

Plaintiff also need not show that defendant specifically intended to deprive of the recognized federal right, as required by word "willfully" in **U.S.C. 242,** See ***Screws v. United States.*** Nor need she show actual damages. ***Basista v. Weir, supra, at*** **87-88;** ***Tracy v. Robbins,*** **40 F.R.D. 108, 113 (D.C.S.C. / 1996).** It is sufficient for plaintiff to show either that the defendant acted under color of (a) statute, ordinance, regulation, custom, or usage of State of Territory," with actual knowledge he was violating a right "secured by the constitution of laws," or that defendant acted with reckless disregard of whether he was thus violating a right.

The allegations of state action, which beyond dispute, brings the conspiracy with in the ambit of the Fourteenth Amendment. It was an allegation of official, state participation in the conspiracy and through its officers with participation of others depriving me of the equal protection of the law, and protection of due process.

In the case of ***Griffin v. Breckinridge Et & Al*** **403 U.S. 88 91 S. Ct. 1790 29 L. Ed 2d. 338 (1971).** 1985 reaches private conspiracies to deprive others of legal rights can, of its self, cause no doubts of the constitutionality. It has been settled that 18 U.S.C. 241, a criminal statute of far boarding phrasing (see n. 4, supra), reaches wholly private conspiracies and is constitutional. E. g., In re Quarles, **158 U.S. 532; *Logan v. United States,* 144 U.S. 263, 293-295;*United States v. Waddell,* 112 U.S. 76, 77-81; *Ex parte Yarbrough,* 110 U.S. 651.** See generally ***Twining v. New Jersey,* 211 U.S. 78, 97-98.** Our inquiry, therefore, need not go only to identifying a source of congressional power to reach the private conspiracy alleged by the complaint in the case.

The Fourteenth Amendment of the Constitution prohibits the respective states from making laws abridging the privileges or immunities of citizens of the United States or denying to any person within the jurisdiction of the state the equal protection of the laws.

District court erred in also dismissing plaintiff's case as moot. In the case of ***Carroll ET Al v. President and Commissioners of Princess Anne ET AL*** **395 U.S. 175 89 S. Ct. 347; 21 L. Ed. 325; (1968).** The United States Supreme Court in this case agreed with the petitioners that the case was not moot. Since 1966, petitioners have sought to continue their activities, including the holding of rallies in Princess Anne and Somerset County, and appears that the decision of the Maryland Court of Appeals continues to play a substantial role in the response of the official to their activities. In these circumstances our jurisdiction is at no end.

This is the teaching of ***Bus Employees v. Missouri;*** **374 U.S. 74 (1963),** which concerned a labor dispute, which had led to state seizure of the business. This court held that, although the seizure had been terminated, the case was not moot because "the labor dispute which gave rise to the seizure remains unresolved.

There thus exist not merely the speculative possibility of invocation of the seizure law in some future labor dispute, but the presence of an existing unresolved dispute, which continues.

The same is true of the fashioning of the order. An issue in the area of the First Amendment rights must be couched in the narrowest terms that shall accomplish the pinpointed objective permitted by constitutional mandate and the essential needs of the public order. In the sensitive field, the state may not employ "means that broadly stifles fundamental personal liberties when the end can be more narrowly achieved." ***Shelton v. Tucker,*** **374 U.S. 488 (1960).** *In other words, the order must be tailored as possible to the exact needs of the case. The participation of both sides is necessary for the purpose. Certainly, the failure to invite participation of the seeking exercise First Amendment rights reduces the possibility of a narrowly drawn order, and substantially imperils the protection, which the Amendment seeks to assure.*

In other words petitioner sure wishes she would have been in one of these courts because knowing that the dispute would have been long resolved, some thing she was desperately seeking under the circumstances. Instead it seemed this district judge did not even consider this when he was in such a hurry to dismiss my case. Me being of know one up against a state entity. And because of this violation of my First and Fourteenth Amendment rights on his part, I have only had to suffer more mental anguish while waiting for the next step. Not to mention the expense. All it would of taken on his part this honorable judge was a little bit of further procedure I was entitled to. Judge Carr in the district court sure didn't bother to invite any participation in my case, he didn't even bother asking for the policies I was requesting to find out if the allegations where true. And then he acts like it was a federal offence when petitioner was advised to ask him to recluse.

The last count for the district court's dismissing plaintiff's complaint was she failed to allege that any protected rights under the constitution of laws have been violated. Another simply untrue fact. Petitioner alleged in her complaint in the district court that she had been violated of her due process of law under the Fifth and Fourteenth Amendment of the Constitution under (42 USCS 1983-1985).

Isn't it true that the purpose of the federal rights statute (42 USCS 1983) Authorizing an action at law, suit in equity, or other proper proceedings for redress of a deprivation, under color of state law, or rights secured by the Federal Constitution and federal laws, is to interpose the federal courts between states and the people, as guardians of the people's federal rights, and thus protect the people from unconstitutional action under color of state law, whether the action be executive, legislative, or judicial; in carrying out this purpose, Congress by expressly authorizing a suit in equity as one of the means of redress, has plainly authorized the federal courts ti issue injunctions in 1983 actions.

In the case that a complaint was brought to the district court of the state of Ohio that it was clear a person was at one time the beneficiary on some insurance policies and was still having to seek a remedy long over due. And stated that the defendant had with held her rights from her, no matter how improbable that it may be to some that she can prove her claim. Or maybe this should be rephrased because some are well aware she can. She was entitled to the opportunity to make the attempt and is not required to accept as final determination based on interferences drawn in favor of defendant from her complaint.

Long before the Rules of Civil Procedure for the District Court of the United States became effective, the court in the case of ***Winglet v. Rockwood, 8 Cir., 69 F. 2d 326, 239,*** *the court disapproved of the practice of attempting to put an end to litigation, was believed to be with out merit, by dismissing a complaint for insufficiency of statement.*

"A suit should not be disposed of on such a motion to dismiss the bill for want of equity unless it clearly appears from the allegations of the bill that it must ultimately, upon final hearing, be dismissed. To warrant such dismissal, it should appear from the allegations that a cause of action does not exist, rather than a cause of action may be defectively stated.***

"That rule of procedure should be followed which is most likely to result in justice between the parties, and generally speaking, that result is more likely to be attained by leaving the merits of the cause to be disposed of after answer and submission of proof, than by attempting to deal with merits on motion to dismiss the bill."

Further some would say that the making of a bill to dismiss for failure to state a claim upon which relief could be granted has the effect of admitting the existence and vality of the claim stated.

Further Congress has specific terms conferred Art. III jurisdiction on the district courts to decide actions brought to redress deprivations of civil rights. Under the opening language of 2343, n9 those courts "shall have original jurisdiction of Any *civil action authorized* by law to be commenced by any person..." (emphasis added). The civil rights action set out in 1983. n10 is, of course, included within the jurisdiction grant of subsection (3) of 1343. Yet petitioner does not, and indeed could not, contest the fact as to 1983, counties are excluded from "persons" answerable to the plaintiff "in an action at law suit and equity" to redress the enumeration deprivations. N11. Petitioner must necessarily argue that in spite of the language emphasized above Congress left it open for the federal courts to fashion a jurisdictional doctrine under general language of Art. III enabling them to circumvent this exclusion, as long as civil right actions and state-law claim arise ***288 from "common nucleus of operative fact." But the question whether jurisdiction over instant law suits extends not only to state-law claim, but to the defendant whom that claim is made, turns, initially, not on the general * 17 contours of the language in Art. III, i.e., "Cases...arising under," but upon the deductions which may be drawn from Congressional statutes as to whether Congress wanted to grant this sort of jurisdiction to federal courts. Parties such as counties, whom Congress *excluded* from liability in 1983, and therefore by reference in the grant of jurisdiction under 1343 (3), can argue with great deal of force that the scope of that "civil action" over which the district courts have been given statutory jurisdiction should not be so broadly read as to bring *back* within the power merely because the facts also give rise to an ordinary civil action against them under state law. In short, as against plaintiff's claim of *additional* power over "pendant party." The reach of the statute conferring jurisdiction should be construed in light of the scope of the cause of actions to which federal judicial power *has* been extended by Congress.

The last attempt petitioner made with the Ohio Department of Insurance was in May 2001. First through telephone conversations and then corresponding letters. The first letter was from Mike Davis at the department on May 8, 2001.

Stating we have recently received your complaint and intend on asking the company for an explanation of its actions. And would update me as to the results .I then received on May 24, 2001 a letter from Pat Smith at the dept. of insurance, stating that the department is not able to address your concerns due to the court actions. Is this believable or what? First of all they run me around from the year 1991-1994 of off and on leading me to believe they would take the proper actions, they cause me to have to go through the Richland County Courts in the first place, along with being involved in that case. Out right lying to the lady at legal aid as to who the selling agent was. And now have the nerve to tell me they cannot address my concerns. With all the communications I have had with them in all these years. After that petitioner was advised to write a letter to the department of insurance requesting the documents under the Freedom of Information Act 5 U.S.C. 552, as amended by Public Law. This letter was written on July 18, 2001.

The response petitioner received from the request of the documents was in a letter from Connie Lodge at the department of insurance on Aug 2, 2001 stating that it is her understanding that previously department staff members have told you that the records regarding your earlier complaint where beyond their retention schedule and would have been destroyed. However, these records have been located at an offsite storage facility. And she would determine which documents would be sent to me as public record. Once again played petitioner for a fool. After that was a phone call from me to the department in which Mike Davis comes directly to the phone asking me if I had and if I would get ahold of Keith Whitacre for the policies? I told him no and I would not. Him getting upset with me about that is when I knew I would not receive the documents requested.

Petitioner would like to say that there is no way in this world that a jury would not agree there has been one big time conspiracy in all these years preventing me from having my rights reinstated if this was all to be heard. There is no human being on the face of this earth that would not agree with the conspiracies charged.

Even when petitioner filed her complaint in the district court of Ohio and was able to get a little assistance with that. There was a hindrance in that, and some one wanting to have control over it all.

Kept trying to tell me that I needed to save some of that information for a hearing that obviously never happened. Third there was a time or two when we where working on it I was not exactly treated like a person. And last for a whole year and a half after the appeal file on October 29, 2001 I was advised there was nothing else I could do. This man was the father of one of the investigators I had contacted in 1992, that had told me he could not believe what they where doing to me. And I some what trusted his legal advise. Even though I now believe there was an ulterior motive in him assisting me in filing the complaint in the first place. And some one was trying to have control over it. Any way this is just another example of the injustice that a person has had to encounter over this. Another example of people trying to hinder the situation. When this mans wife said to me, maybe this man from the department of insurance did not like you. I said I don't really care. But I knew then that they where for sure involved in talking to some one. And it was not only the state but Keith Whitacre the one involved in defrauding me out of one of those policies. The man who wanted control.

This case before the United States Supreme Court today is a case that needs serious attention. A case that has literally deprived a person of twelve years of a normal life now in the conspiracies that have prevented a person from getting justice. A case where a person has not been allowed to prove the facts, in which she could of proved a lot of. With all the correspondence with letters and recorded conversations in all these years.

Now to the appeal in the United States Court of Appeals and even though petitioner does not feel she had proper representation in alk of this. And knows she has been severly disadvantaged by the law in all these years, for it to continue in the higher courts to her, is just unbelievable. It could not of taken those courts to long to realize that these complaints and appeals where not perfectly plead. That does not mean they had the right to deprive me of the proper procedures. To contribute to the corruption that has occurred by ignoring the facts put before them. Knowing I was only requesting the documents. Petitioner has been deprived another two years of a normal life because of this. And literally has tried dealing with all of this while living in a car.

The most inhuman situation there could be. To top it off truly and honestly thought the United States Court of Appeals would put a halt to it. And if not make sure I was provided with the documents requested, at least offer me some more proper procedures.

Maybe petitioner should have instead of filing her appeal in the United States Court of Appeals for Ohio should of come directly to the United States Supreme Court. It might of saved her the close to two years waiting and hoping and praying for some justice. In this case of ***Unites States v. Price ET & AL*** **383 U.S. 787; 86 S. Ct. 1152; 16 L. Ed. 2d 267 (1996).** On appeal, the Supreme Court of the United States reversed. In the opinion by Fortas, J., it was unanimously held (1) in No. 60 that private individuals where criminally liable under 242, if they were willful participants in joint activity with state or its agents, and (2) in No. 59 that reached assaults upon rights under the entire Constitution, including rights under the due process clause.

COURTS 700.5
Federal injunction-stay of state court proceedings-

Headnote: (1A) (1B)
The federal civil rights statute (42 USCS 1983) authorizing a suit in equity to redress deprivation, under color of state law, of federal constitutional rights, continues an "expressly authorized" exception to the federal anti-injunction statute (28 USCS 2283) prohibiting federal courts from granting injunctions staying state court proceedings "except as expressly authorized by Act of Congress," and Federal District Court errs in holding that, because of the anti-injunction statute, it is with out power in a 1983 action to injoin a proceeding pending in state court under any circumstances what soever. In the case of ***Mitchem DBA Book Mart v. Foster ET Al*** **407 U.S. 225 95 S. Ct. 2152; 32 L. Ed. 2d 705 (1972).** On appeal, the United States Supreme Court reversed and remanded the case. In opinion by Stewart, J., expressing the unanimous view of the court, it was held that 1983 constituted an "expressly authorized" exception to 2283, and that 2283 thus did not preclude injunctive relief in the present case. Burger, Ch., joined by White and Blackmun, JJ., concurred in the court's opinion and noted that although 2283 did not bar an injunction, the District Court should, on remand, consider general notions of equity or principles.

Petitioner brought her action under USCS 1983 and USCS 1985 which authorizes legal and equitable actions against a "person" who, under color of law, deprives another of his federal rights, and plaintiff alleged that the district court had jurisdiction. But because maybe she did not exactly have the proper representation and know herself to also include the court had jurisdiction under the provisions of 28 U.S.C. (1343) (3).

Maybe the State Attorney General as a party defendant should cure the jurisdictional defect in the complaints against the municipalitites. Whether jurisdiction was available under 28 U.S.C. (1331), the plaintiff not having alleged because of not knowing to do so. In case this might have been an issue in the case. Regardless the Fourteenth Amendment claims with the nature of "liberty" and "property" should have been enough to protect the fourteenth amendment against denial with out due process hearing. Instead under the on going circumstances in the case, petitioner feels this was just another opportunity for the justices to take advantage of a helpless person in the continuous cover up of corruption that has occurred.

Neither the District Court or the Court of Appeals reached the question whether the complaint stated a cause of action which 28 U.S.C. (1331) jurisdiction would lie. But petitioner is doing so only because of the disadvantage she has had of the law for so long, only trying to cover every avenue she can.

COURTS 240
Pendent federal jurisdiction-civil rights action-joinder of municipal corporation.

In an action brought in Federal Court under USCS 1983, which provides for a civil action against any person who deprives another of civil rights under color of state law, and 28 USCS 1343 (3), which gives Federal District Courts original jurisdiction of any civil action to redress the deprivation, under color of state law, of any rights secured by the United States Constitution or by federal law providing for equal rights, the joinder of the municipal corporation is not diversity of citizenship, but is a claim of jurisdictional pendent to a suit brought against a municipal officer within 1343. Brother BRENNAN, stated that all we hold is that where the asserted basis of federal jurisdiction over a municipal corporation in not diversity of

citizenship, but is a claim of jurisdiction pendent in a suit brought against municipal officer within 1343, the refusal of Congress to authorize suits against municipal corporations under the cognate of 1983 is sufficient to defeat the asserted claim of pendent-part jurisdiction.

The United States Court of Appeals erred in stating that plaintiff had received the discovery she was entitled to in the 1995 court action. When it is clear that she had not received the documents she was entitled to as being beneficiary on the policies before the fraud. If she had received those documents, why would of she even been in first the district court, and then in the court of appeals? Did both of these courts just over look the fact that she was beneficiary at one time, and ignore the clearly shown forgery in a document that was also provided to these courts. So what if the lower courts made that ruling, it is far from being the facts. And plaintiff had stated also she had been conspired against in that situation. But once again was not allowed to prove all these facts.

Again the court of appeals agreed with the district court that the allegations of misconduct and conspiracy where thus insufficient. To me this is just another portion of the mental cruelty I have dealt with. Mainly because I have lived this conspiracy. I know the allegations are facts and far from being conclusory and to top it off I was not provide the opportunity to further prove the allegations. In all of these years of consistently seeking help over this because of certain people's plan in this dragging out to make the case worth more money, there has been a hindrance in me getting the proper help Always an obstacle, always a halt to receiving any justice. And God as my witness these are facts that some one needs to put a stop to.

When the United States Court of Appeals sent to me on June 25, 2002 a letter stating after careful consideration of the matter, it is ordered that the motion to dismiss is referred to a hearing panel of the court. Petitioner was sure when she received that letter that some justice was finally going to take place regardless of how imperfect any thing was pleaded in her case. Petitioner receives the order Aug 20, 2003 from the United States Court of Appeals. She was mind boggled to say the least.

Petitioner then did not know what else to do, she had been told by the man that assisted her, there was no way she would get certorari, and you don't even have the money, in which I informed him otherwise. Any way petitioner then wrote a letter to the United States Court of Appeals letting them know that this was possibly going to be appealed. Asking them how could of they not seen a violation of some ones constitutional rights in this case after the conspiracies in all of these years? Also asking them did you see the policies I have not been provided? That has been top secret information in the cover up of fraud.

Petitioner then filed for review shortly after that to the best of her ability. But the United States Court of Appeals on September denied my petition for review for the reason that is way beyond my imagination, that my letter of possible appeal was construed as a petition for rehearing. And there was never a hearing in the first place from day one in this case. Petitioner requested a review.

On petitioners appeal in the United States Court of Appeals, was a person that has no doubt been so disadvantaged by the law required to know the exact laws to be treated fairly and to be provided with the due process of law according to her rights under the constitution of laws. When she obviously did not and was not properly informed. On appeal from a judgment from a one-judge District Court, in a case which under 28 USCS 2282, should have been heard by three-judge court. Is it really a requirement of the justice system when a persons life literally has been messed with? If this is the case, then after twelve years of this there really is a story to be told, and will be if some one does not put a halt to it all. My only hopes other than the United States Supreme Court will reverse and remand this case with direction to enter an appropriate order pursuant to 28 USCS 2282 for the convening of three-judge court to determine the merits of plaintiff's constitutional claim.

This case has been dismissed improperly on all accounts and is far from being moot. It should of never been ruled that. It is petitioners understanding that the court of appeals where at least suppose to except the allegations as being true, especially with out further proceedings of the due process of law. And it was clearly stated also she had further evidence that could of been provided, if opportunity to be heard.

*Although there has been disagreement among us upon the question of the precise scope of 1983, none of us therefore denied "the fact that a powerful behind the creation of 1983 was the purpose that it be available in, and be shaped through, original tribunals," or has forgotten "how important providing a federal trial court was among the several purposes. Section 1983 opened the federal courts to**2429 private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the constitution and laws of the nation. And the decision maker should rest soley on the legal rules rule and evidence adduced at a hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on through his statement. And, of course, an impartial decision maker is essential.*

"Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws.- *Story of Constitution,* sec. 429." Globe App., at 68.

Reasons For Allowing Writ Of Certiorari

Actions of Sixth Circuit District Judge and the United States Court of Appeals Judges subverting legal rights and protections that are guaranteed to all citizens of the United States. Using their judicial positions to inflict harm on a person whom is not only homeless because of the ongoing injustice that has occurred, but a person who was only asking for some simple documents to get her life back and put a halt to the conspiracies that have taken place in all these years in preventing her to prove she was defrauded. Actions of these judges participating in depriving a person of her constitutional due process laws of the fourteenth amendment. Ignoring the facts presented in the complaint to the best of her ability.

"The States never had the right, though they had the power, to inflict wrong upon free citizens by denial of the full protection of the laws... and the States did deny to petitioner equal protection of the laws, they did deny me the rights of citizens under the Constitution, and this citizen had no remedy...

Who dare say now that the Constitution has been amended? That the nation cannot provide against all such abuses and denials of rights as these in the States and by the States, or the combinations of persons?"Does petitioner have to end up seeking public support if judicial relief is not forthcoming?

The main thrust in petitioner's complaint is the case of ***Haines v. Kerner ET & AL.*** **404 U.S. 519; 92 S. Ct. 594; 30 L. Ed. 2d 652.** The case of a pro se: litigant the Supreme Court reversed, expressing the unanimous views of the court, it was held that since it did not appear beyond doubt that the plaintiff could not prove no set facts in support of his claim, which would entitle him to relief, he was entitled to offer proof. In this case the United States Supreme Court hold allegations of a pro se litigant to less stringent standards than formal pleadings drafted by lawyers.

In the case of ***Maine v. Thiboutot*** **448 U.S. 1 555, 100 S. Ct. 2502.** The Supreme Court made clear that 42 U.S.C. provides for a remedy for actions under color of law which contravene federally protected rights, whether those rights derive from constitution or federal statute. The Supreme Court also explained that the "requirements of the procedural process applies to the deprivation of interest encompassed by the fourteenth amendments of liberty and property.

"Does section 2281 of U.S.C. require that a three-judge court be convened in any case in which a preliminary or permanent injunction is sought to restrain "the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute..." The purpose of 2281 is "to prevent a single federal judge from being able to paralyze totally the operation of an entire regulatory scheme...by issue of a broad injunctive order" ***(Kennedy v. Mendoza-Martinez,*****372 U.S. 144, 1540.** *and provide "procedural safeguards against improvident state-wide doom by federal court of state's legislative policy."* The laws of Federal courts 190-191 (2d ed. 1970). Or, if deemed appropriate, to obstrain from such determination pending state court proceedings. See ***Lake Carriers" Ass. V. MacMullan*** **406 U.S. 498, 509-513 (1972).**

If petitioner would of known this unexpected order from the United States Court of Appeals in the State of Ohio would have had this outcome, she would of filed for her petition for writ of certiorari to review the case in the United States Supreme Court before the judgment was entered under 28 U.S.C. 2101 (e).

CONCLUSION

For the reasons stated above, the decision of the United States Court of Appeals of Ohio should be reversed and declared unconstitutional. This case is far from being moot and the decision of the United States Court of Appeals for Ohio continues to have an adverse effect on petitioner's rights. Because an interference with this life, liberty and property rights so serious as this now under consideration and so disturbing of equity right, must be deemed arbitrary, unless it be supportable as a reasonable exercise of this agencies power of the state.

Respectfully submitted,

Cindy L. Naething Pro Se:
P.O. Box 50250
Bowling Green, Kentucky
42102

APPENDIX A-- OPI NION AND JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Filed October 24, 2001

No. 3:01CV7452

Cindy L. Naething

Plaintiff

-v-

Lee Covington, et al,

Defendants

This is a pro se 1983 and 1985 case arising from plaintiff's contention that she is the beneficiary of two life insurance policies issued by the defendant American General Life and Accident Insurance Company. She claims, inter alia, that the state defendant, the Ohio Department of Insurance (sued through its Director; Lee Covington), conspired with American General, and has deprived her of unspecified civil rights.

Pending are motions to dismiss filed by both defendants. For the following reasons the motions shall be granted.

OPINION OF THE COURT

Finally, and in any event, the defendant insurance company is not a state actor. Thus cannot be sued under 1983.

The state defendant seeks dismissal under the doctrine of sovereign immunity. That argument need not be addressed because defendant's alternative argument that the plaintiff's complaint fails for want and specificity to state a claim – is well taken. Her allegations of misconduct and conspiracy are entirely conclusory, and thus is insufficient. See, e.g., Gruiterrez v. Lynch, 826 F. 2d 1534, 1538 (6th Cir. 1987) ("conspiracy claims must be plead with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state a claim under 1983"). Moreover, even read more broadly in her favor, the plaintiff's allegations fail to show that any right protected under the Constitution and laws of the United States have been violated.

In light of the foregoing, it is ORDERED THAT the motions to dismiss be, and the same hereby are granted; plaintiff's motion to compel dismissed as moot.

So ordered

S/James G. Carr
James G. Carr
United States District Judge

Appendix B

APPENDIX B—OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

-v- ORDER

Lee Covington, et al,

Defendants

This Court filed a judgment entry closing this case on October 24, 2001. It appearing that the defendant American General Life & Accident Insurance filed a motion to dismiss on October 19, 2001, to which plaintiff had not had the opportunity to file a response.

It is hereby ordered that a judgment entry filed on October 24, 2001 is vacated only as to the closing of the case. Further ordered that the plaintiff shall file her response to the defend. motion to dismiss by November 19, 2001; defendant's reply due December3, 2001.

S/ James G. Carr

So ordered. United States District Judge

Appendix C

APPENDIX C-OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

-v- ORDER

American General Life Ins. Co., et al.,

Defendants

This suit by claimant to life insurance proceeds on two policies issued by the defendant American General Life Insurance Company. Pending is the defendant's motion to dismiss. For the reasons as follow, the motion shall be granted.

The plaintiff sued to recover the same death benefits in 1995 in the Court of Common Pleas of Richland County, Ohio. The court dismissed her suit, finding that the plaintiff had no interest in, and was entitled to no benefits under the policies. plaintiff's appeal of the judgment was dismissed as untimely.

Appendix C

Plaintiff now sues under 42 U.S.C. 1983, 1985. Her suit must be dismissed for the various reasons urged by the defendant.

First, the defendant is not a state actor, and thus does not come within the term, "under color of law," as used in 1983. Insurance companies are not state agencies of the state, and the mere fact that insurance companies are extensively regulated does not cause them to act under color of state law. See, e.g., Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974).

Second, plaintiff has failed to allege material facts sufficient to support her claim that the defendant engaged in a conspiracy subject to 1985(3). See, e.g., Barkley v. City of Jackson, 705 F. Supp. 390, 392 (W.D. Tenn. 1988) (material facts must be plead with specificity to sustain cause of action under 1985(3). Nor has she claimed that the defendant acted on the basis of racial animus, or that it deprived her of any of her civil rights. See Lewis v. Hager, 956 F. 2d 1164 (6th Cir. 1992).

Finally, plaintiff's claims are barred by the doctrine of collateral estoppel. Her suit in Richland County, Ohio, of Common Pleas put into issue her entitlement to the benefits that she seeks in this suit. She could of brought the instant federal claims in that case. The judgment adverse to her in that litigation bars any subsequent effort to recover on the basis of her contentions that the defendant acted improperly in rejecting her claims and paying some else the proceeds of the policies to someone else.

Appendix C

In light of the foregoing, it is necessary to address defendant's contention that plaintiff's suit is outside the statute of limitations.

It is, therefore,

ORDERED THAT the defendant's motion to dismiss be, and the same hereby is granted.

So ordered

S/ James G. Carr
James G. Carr
United States District Judge

Appendix D

APPENDIX D-OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

v. ORDER

American General Life Ins. Co. Et al.,

Defendants

Appendix D

This is a suit by claimant to life insurance proceeds on two policies issued by defendant American General Life Insurance Company. Pending is plaintiff's motion to recuse. For the following reasons that follow, the motion shall be denied.

Plaintiff brought suit against two defendants. The individual defendants. The individual motion defendants motion to dismiss was granted. The entry directed, erroneously, that the case be closed. It since has been reopened, and the remaining defendant has filed a motion to dismiss on its behalf.

Plaintiff contends that the initial error in dismissing both defendants on the motion of only one of them has irredeemably tainted my further consideration of the case.

That is simply not so. Judicial error at one stage of a proceeding does not entitle a litigant a new judge. The standard for recusal under 28 U.S.C. 455(a) is "whether a reasonable person, knowing all the surrounding circumstances, would consider the judge impartial." United States v. Norton. 700 F. 2d 1072 1076 (6th Cir 1983).

A reasonable person, aware that a judge through oversight commited an error, which he later corrected, thereby allowing a litigant to proceed with her suit, would not conclude that a judge was biased against litigant, or had pre-determined the outcome of her case. There is no merit to plaintiff's motion to recuse. It is accordingly, ORDERED THAT plaintiff's motion to

recuse be, and same is hereby denied.

So ordered. S/ James G. Carr

Appendix E

APPENDIX E-OPINION AND JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV7452

Cindy L. Naething

Plaintiff

v. JUDGMENT ENTRY

American General Life Ins. Co., et al.,

Defendants

For the reasons stated in the Order filed December 14, 2001, it is hereby ordered that the defendant's motion to dismiss be, and same hereby is granted. Case closed.

So ordered.

S/ James G. Carr
James G. Carr
United States District Judge

Appendix F

APPENDIX F—OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant,

ORDER
Filed June 25, 2002

-v-

Lee Covington, Director; American General Life And Accident Insurance Company,

Defendants-Appelles

Before: BOGGS, CLAY, and GILMAN, Circuit Judges.

This matter is before the court upon consideration of a motion of a defendant to dismiss the appeal. The appellant responded and replies were filed.

After careful consideration of the matter, it is ordered that a motion to dismiss is referred to a hearing panel of the court.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green
Clerk

Appendix G

APPENDIX G-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant

-v-

ORDER
Filed August 30, 2002

Lee Covington, Director;
American General Life &
Acc. Insurance Company

Defendants-Appelles

Upon consideration of appellant's motion to deny defendant/appellee Ohio Department of Insurance's brief.

It is hereby ORDERED that the motion be and hereby Is DENIED.

ENTERED PURSUANT TO RULE 45 (a),
RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

S/ Leonard Green

Appendix H

APPENDIX H-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Scott Myers

F. James Foley

ORDER

June 20, 2003

RE: 01-4189 Naething vs. Covington

Dear Madam/Sirs:

This will advise you that the case noted above is scheduled for submission to the court on briefs of the parties and the record on July 29, 2003. You will be promptly advised of the court's decision, and any other order or direction it may issue.

Very truly yours,
S/ Marjorie Eliasen
Marjorie Eliasen
Calendar Coordinator

Enclosure
tmb

Appendix I

APPENDIX-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff/Appellant

ORDER
Filed July 29, 2003

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

Under consideration of appellee's motion to dismiss; and appellant's motion to clarify, it is hereby ORDERED a ruling on these motions will be deferred until the hearing panel confers on July 29, 2003.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green
Leonard Green, Clerk

APPENDIX J—OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cindy L. Naething

Plaintiff – Appellant

-v-

Lee Covington, Director, Ohio Department of Insurance
American General Life
And Accident Ins.

Defendants – Appellees.

ORDER
Filed Aug 20, 2003

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF OHIO

Before: GILMAN and GIBBONS, Circuit Judges; and JORDAN, District Judge.

PER CURIAM. Cindy Naething filed an action under 42 U.S.C. 1983 against American General Life and Accident Insurance Company ("AGLA") and Director Lee Covington ("Director Covington") of the Ohio Department of Insurance claiming entitlement to proceeds from life insurance policies issued to Martin Hampton and seeking production of the policies and related cancel checks. Prior to filing her complaint in the district court, plaintiff filed an action in Ohio state court seeking discovery and claiming benefits under the policies. The Ohio court ruled in 1995 that plaintiff had received all the discovery to which

Appendix J

*The Honorable Leon Jordan, United States District Judge for the Eastern District of Tennessee, sitting by designation.

Stating she was entitled and that she was not entitled to benefits under the insurance policies. Plaintiff filed her complaint in district court on Aug 28, 2001. Defendants each filed a motion to dismiss. The district court granted both motions. It held with regard to AGLA that the complaint was barred by the applicable statute of limitations and that AGLA is not a state actor and therefore cannot be sued under 1983. As to Director Covington, the district court held that the complaint failed for want of specificity to state a claim because plaintiff's allegations of misconduct and conspiracy were conclusory and thus insufficient.

The court further held that the complaint failed to sufficiently allege that a right protected under the Constitution of laws of the United States had been violated, a requirement for a 1983 action.

For the reasons articulated by the district court, we agree that the claims against AGLA are barred by the statute of limitations and that AGLA is not a state actor, a claim under 1983 can not stand. We further agree with the district court that the claims against Director Covington fail for want of specificity and that the complaint fails to allege sufficiently that a right has been violated. Having studied the record on appeal and the briefs of the parties, we are not persuaded that the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out

Appendix J

By the court in its opinion and order entered October 24, 2001.

Appendix K

APPENDIX K-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cindy L. Naething

Plaintiff-Appellant

ORDER
Filed September 19, 2001

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

Upon consideration of appellant's motion to inform the United States Court of Appeals for the Six Circuit of possible Appeal construed as a petition for rehearing,

It is ORDERED that the petition for rehearing be, and it Hereby is, DENIED.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green, Clerk

Appendix L

APPENDIX L-OPINION AND MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant Filed September 19, 2003

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

MANDATE

Pursuant to the court's disposition that was filed 8/20/03 the mandate for this case issues today.

A True Copy.

COST: NO COSTS TAXED Attest:

Filing fee.....$ S/ Robin Duncan
Printing.....$ Deputy Clerk

Supreme Court, U.S.
FILED
FEB 6 - 2004
OFFICE OF THE CLERK

(4)

No. 03-824

IN THE

Supreme Court of the United States

CINDY L. NAETHING,

Petitioner,

v.

LEE COVINGTON, Director;
AMERICAN GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

F. JAMES FOLEY
VORYS, SATER, SEYMOUR
AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5411

Attorneys for Respondent American General Life and Accident Insurance Company

185581

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

BEST AVAILABLE COPY

STATEMENT PURSUANT TO RULE 29.6

Respondent, American General Life and Accident Insurance Company is a wholly owned subsidiary of the American General Corporation which is a wholly owned subsidiary of American International Group, Inc.

TABLE OF CONTENTS

Page

Statement Pursuant to Rule 29.6 i

Table of Contents ii

Table of Cited Authorities iii

Table of Appendices v

Basis for Jurisdiction 1

Statement of the Case 1

Reasons for Denying the Petition 4

I. The Sixth Circuit Correctly Affirmed The District Court's Determination That Petitioner's Claims Are Barred By The Doctrines Of Collateral Estoppel And Res Judicata. 5

II. The Sixth Circuit Correctly Affirmed The District Court's Determination That The Two-Year Statute Of Limitations In Ohio Bars Petitioner's Claims Under 42 U.S.C. §§ 1983 And 1985. 5

III. The Sixth Circuit Correctly Affirmed The District Court's Holding That AGLA Is Not A State Actor And Cannot Be Sued Under 42 U.S.C. § 1983. 7

Conclusion 8

TABLE OF CITED AUTHORITIES

Page

Cases:

American Manufacturers Mutual Insurance Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 43 L. Ed. 2d 130 (1999) 7

Ashiegbu v. Purviance, 74 F. Supp. 2d 740, 747 (S.D. Ohio 1998) *cert. dismissed*, 529 U.S. 1001, 120 S. Ct. 1287, 146 L. Ed. 2d 215 (2000) 6

Browning v. Pendleton, 869 F.2d 989 (6th Cir. 1989) 6

Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S. Ct. 449, 42 L. Ed. 2d 477 (1974) 7

Sevier v. Turner, 742 F.2d 262 (6th Cir. 1984) 6

Walker v. City of Lakewood, 742 F. Supp. 429 (N.D. Ohio 1990) 6

Wilson v. Garcia, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985) 5

Cited Authorities

Page

Statutes:

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1257(2) 1

42 U.S.C. § 1983 ..... *passim*

42 U.S.C. § 1985(3) 2, 4, 5, 6

42 U.S.C. § 1988 5

Ohio Revised Code § 2305.10 6

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States District Court For The Northern District Of Ohio, Western Division Dated October 24, 2001 ..... 1a

Appendix B — Opinion Of The United States Court Of Appeals For The Sixth Circuit Dated And Filed August 20, 2003 ..... 4a

BASIS FOR JURISDICTION

Petitioner is seeking review of a judgment of the United States Court of Appeals for the Sixth Circuit. The Petitioner incorrectly states that the Court's jurisdiction is invoked under 28 U.S.C. § 1257(2). Read liberally, Petitioner invokes the jurisdiction of this Honorable Court under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On or about September 30, 1991, American General Life and Accident Insurance Company ("AGLA") paid to Sandra Hampton, Martin Hampton's widow and designated beneficiary, the $15,048.43 death benefit under Martin Hampton's ("Hampton") AGLA life insurance policy. (R#1, p. 8 – Exhibit III; R#11 – Exhibits H, I).[1]

On March 21, 1995, Petitioner, Cindy L. Naething, filed an action claiming death benefits under Hampton's AGLA life insurance policies in the Court of Common Pleas, Richland County Ohio. (R#11 – Exhibit F). On July 11, 1995, the state court granted summary judgment to AGLA, finding that Petitioner had received all discovery to which she was entitled and that she was not entitled to any benefits under Hampton's life insurance policies. (R#11 – Exhibit A). On March 29, 1996, Petitioner's Appeal of that judgment was dismissed by the Court of Appeals, Richland County, Ohio. (R#11 – Exhibit B).

More than five years later, on August 28, 2001, Petitioner commenced an action in the United States District Court, Northern District of Ohio, naming AGLA as a defendant,

---

1. Pursuant to Sixth Circuit Rule 28(d) all "R#" numerical designations refer to filings in the District Court's record.

along with the Director of the Ohio Department of Insurance. Petitioner's Complaint restyled her previously adjudicated state law claims as violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3). (R#1). Petitioner sought to compel AGLA to produce the two AGLA insurance policies held by Hampton and related cancelled checks. (R#1). Once again, Petitioner claimed that she was entitled to death benefits under one or both of Hampton's policies. (R#1). On October 19, 2001, AGLA moved to dismiss the Complaint. (R#11).

On October 24, 2001, the District Court issued an order and judgment entry dismissing Petitioner's Complaint against AGLA. (R#12).[2] The District Court held that the doctrines of collateral estoppel and res judicata barred Petitioner from re-litigating issues previously decided by the Ohio courts, and that Petitioner's claims under 42 U.S.C. §§ 1983 and 1985 were barred by the two-year statute of limitations. Further, the District Court held that AGLA is not a state actor, and cannot be sued under § 1983. The District Court also noted that Petitioner's allegations of conspiracy were unsupported by material fact, entirely conclusory, and insufficient at law to state a claim under § 1983. "Moreover," the Court observed, "even read most broadly in her favor, the Plaintiff's allegations fail to show that any right under the Constitution or laws of the United States has been violated." (R#12).

On October 29, 2001, Petitioner filed Notice of Appeal to the Sixth Circuit. (R#15).

---

2. The copy of the Order and Judgment entry of the District Court dated October 24, 2001 at Appendix A to the Petition is missing two entire paragraphs. A true, accurate, and complete copy is appended hereto as Appendix A for this Court's reference.

On November 1, 2001, the District Court, recognizing that Petitioner had not had an opportunity to respond to AGLA's Motion to Dismiss, entered an Order vacating its entry of October 24, 2001 as to the closing of the case. The District Court further ordered Petitioner to file a response to AGLA's Motion to Dismiss by November 19, 2001. (R#15).

On November 14, 2001, Petitioner filed a Motion to Recuse asking that Judge Carr recuse himself based upon his Order of October 24, 2001. (R#17). On November 16, 2001, Petitioner filed her Response to AGLA's Motion to Dismiss. (R#19).

On December 14, 2001, Judge Carr denied Petitioner's Motion to Recuse, and granted AGLA's Motion to Dismiss for the reasons stated in his Order filed October 24, 2001. (R#20, #21, #22).

On August 20, 2003, the Sixth Circuit filed its per curiam opinion affirming the judgment of the District Court "upon the reasoning set out by the court in its opinion and order entered October 24, 2001."[3] The Sixth Circuit issued its mandate for this case on September 19, 2003.

---

3. Appendix J to the Petition is not a true and accurate copy of the Sixth Circuit's per curiam opinion dated August 20, 2003. In fact, Appendix J materially misstates the opinion of the Sixth Circuit. The Sixth Circuit's Opinion states in pertinent part:

> Having studied the record on appeal and the briefs of the parties, we are not persuaded that the District Court erred in dismissing Plaintiff's case. Because the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out by the court in its opinion and order entered October 24, 2001.

A true, accurate, and complete copy of the Sixth Circuit's Opinion dated August 20, 2003 is appended hereto as Appendix B.

REASONS FOR DENYING THE PETITION

The eight questions presented by the Petition do not identify any legal error in the Sixth Circuit's opinion, nor do they set forth any compelling reason why this Court should grant the Petition. Because Petitioner disagrees with the state and federal court rulings below, she alleges that the participating judges are "subverting the legal rights and protections guaranteed to all citizens," and "using their judicial positions to inflict harm." (Pet., at 28). Read liberally, the Petition asks this Court to exercise its supervisory power to correct what Petitioner perceives as the Sixth Circuit's departure from the accepted and usual course of judicial proceedings, and its approval of similar conduct by the District Court.

In dismissing Petitioner's claims under 42 U.S.C. §§ 1983 and 1985, the District Court noted that Petitioner's underlying claims to documents and to insurance benefits had already been decided by the Ohio courts, and that the doctrines of collateral estoppel and res judicata barred her from relitigating those claims. Further, the District Court held that Petitioner's civil rights claims were barred by the applicable statute of limitations. Finally, the Court held that because AGLA is not a state actor, AGLA cannot be sued under § 1983.

The Sixth Circuit adopted the reasoning of the District Court's opinion dated October 24, 2001, and affirmed its dismissal by applying settled law to the facts. The Sixth Circuit's decision was proper in all respects, and does not conflict with any decision of this Court, nor of any other court of appeals. Respondent respectfully urges this Court to deny the Petition for Writ of Certiorari.

I. The Sixth Circuit Correctly Affirmed The District Court's Determination That Petitioner's Claims Are Barred By The Doctrines Of Collateral Estoppel And Res Judicata.

On July 11, 1995, the Court of Common Pleas, Richland County, Ohio, determined that Petitioner had received all of the discovery from AGLA that she was entitled to, and that she was not entitled to any benefits under Hampton's life insurance policies. The Court of Appeals, Richland County, dismissed Petitioner's appeal from that judgment on March 29, 1996. The adverse decisions of the Ohio courts on Petitioner's underlying claims to documents and to life insurance benefits are res judicata. Petitioner is estopped from re-litigating these issues. Because the Ohio courts determined that Petitioner had no underlying right to the documents and benefits she was seeking, the District Court properly determined that Petitioner's civil rights claims, based upon the deprivation of those documents and benefits, were groundless and should be dismissed.

II. The Sixth Circuit Correctly Affirmed The District Court's Determination That The Two-Year Statute Of Limitations In Ohio Bars Petitioner's Claims Under 42 U.S.C. §§ 1983 And 1985.

In *Wilson v. Garcia*, the Court construed the borrowing principle of 42 U.S.C. § 1988 to direct the selection, in each state, of the most appropriate statute of limitations for all claims under 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261, 275, 105 S. Ct. 1938, 1947, 85 L. Ed. 2d 254, 266 (1985). Claims under § 1983 are best classified or characterized as personal injury actions for purposes of selecting the most appropriate statute of limitations. *Id.* at 276. The Sixth Circuit

has held that the two-year statue of limitations for bodily injury, contained in Ohio Revised Code § 2305.10, is the most appropriate statute of limitations for § 1983 actions arising in Ohio. *Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir. 1989). The applicable statute of limitations in Ohio for claims under 42 U.S.C. § 1985 is also two years. *Walker v. City of Lakewood*, 742 F. Supp. 429, 430-431 (N.D. Ohio 1990) *cited in Ashiegbu v. Purviance*, 74 F. Supp. 2d 740, 747 (S.D. Ohio 1998) *cert. dismissed*, 529 U.S. 1001, 120 S. Ct. 1287, 146 L. Ed. 2d 215 (2000).

Petitioner's Complaint, filed in the District Court on August 23, 2001, acknowledged that AGLA notified Petitioner, by letter dated May 27, 1992, that it had paid the death benefits under Hampton's life insurance policy to Sandra Hampton on September 30, 1991. (R#1 – Exhibit III; R#19, p. 2). Petitioner's cause of action, if any, accrued no later than May 27, 1992. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984) ("The statute of limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action.")

The latest date mentioned anywhere in Petitioner's Complaint is April 1994. (R#1 – Exhibit III (A)). Accordingly, the Sixth Circuit correctly determined that Ohio's two-year statute of limitations, applicable to civil rights actions under 42 U.S.C. §§ 1983 and 1985, bars Petitioner's claims against AGLA. Accordingly, the Sixth Circuit properly affirmed the judgment of the District Court dismissing Petitioner's Complaint.

III. The Sixth Circuit Correctly Affirmed The District Court's Holding That AGLA Is Not A State Actor And Cannot Be Sued Under 42 U.S.C. § 1983.

To state a claim for relief in an action brought under 42 U.S.C. § 1983, Petitioner must establish that she was deprived of a right secured by the Constitution or laws of the United States and that the alleged deprivation was committed under color of state law. *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 50, 119 S. Ct. 977, 985, 43 L. Ed. 2d 130, 144 (1999).

AGLA, a private insurer, did not act under color of state law when it paid life insurance benefits to Hampton's designated beneficiary. Indeed, Petitioner never alleged that AGLA acted under color of state law, nor that AGLA had deprived her of any federal right. Petitioner simply repeats her belief that she was the rightful beneficiary, and that she is entitled to benefits under the insurance contract. As noted in the Sixth Circuit's per curiam opinion, "The Ohio court ruled in 1995 that Plaintiff received all the discovery to which she was entitled and that she was not entitled to benefits under the insurance policies." (Pet., App. J at 13j).

Insurance companies are regulated by the state. It is well settled in the law, however, that "the mere fact a business is subject to state regulation does not by itself convert its action into that of the state." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350, 95 S. Ct. 449, 42 L. Ed. 2d 477, 483 (1974) *cited in American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. at 52, 119 S. Ct. at 986, 143 L. Ed. 2d at 144 (1999). Private insurers are not held to constitutional standards unless "there is a sufficiently close nexus between the state and the challenged action of the regulated entity so

that the action of the latter may be fairly treated as that of the state itself." *Id.* "Actions taken by private entities with the mere approval or acquiescence of the state is not state action." *Id.*

Petitioner has not alleged that the State of Ohio had any involvement, whatsoever, in AGLA's decision to pay Sandra Hampton the death benefits under Hampton's AGLA life insurance policies. AGLA did not act under color of state law when it fulfilled its private contractual obligation to pay benefits to Hampton's designated beneficiary upon his death. Further, Petitioner has failed to demonstrate that AGLA's payment of benefits deprived her of any federal right. Accordingly, the Sixth Circuit correctly affirmed the District Court's holding that AGLA was not a state actor, and could not be sued under 42 U.S.C. § 1983.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

F. JAMES FOLEY
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5411

Attorneys for Respondent American General Life and Accident Insurance Company

APPENDIX A — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION DATED OCTOBER 24, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 3:01CV7452

Cindy L. Naething,

Plaintiff

-v.-

LEE Covington, et al.,

Defendants

ORDER

This is a pro se § 1983 and § 1985 case arising from plaintiff's contention that she is the beneficiary of two life insurance policies issued by the defendant American General Life & Accident Insurance Company. She claims, inter alia, that the state defendant, the Ohio Department of Insurance (sued through its Director, Lee Covington), conspired with American General, and has deprived her of certain unspecified civil rights.

Pending are motions to dismiss filed by both defendants. For the reasons that follow, the motions shall be granted.

Appendix A

Plaintiff is convinced she is the beneficiary of the two policies. She has been unable to procure copies of the polices from the defendant insurance company. She filed and lost an action for discovery in the Richland County, Ohio, Court of Common Pleas. Her appeal from that decision was dismissed as untimely. She here seeks to relitigate issues decided in that case. In view of the former, adverse decision, she cannot do so under the doctrines of collateral estoppel and res judicata.

In any event, her complaint against the insurance company is barred by the statute of limitations. She was aware of her potential claim by the end of 1992, at the latest. This case was filed nearly nine years later. The statute of limitations is two years in a civil rights case. *Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir.1989).

Finally, and in any event, the defendant insurance company is not a state actor. Thus, it cannot be sued under § 1983.

The state defendant seeks dismissal on the doctrine of sovereign immunity. That argument need not be addressed because defendant's alternative argument — that the plaintiff's complaint fails for want of specificity to state a claim — is well taken. Her allegations of misconduct and conspiracy are entirely conclusory, and thus is insufficient. *See, e.g., Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir.1987) ("conspiracy claims must be pled with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983"). Moreover, even read most broadly in her favor, the plaintiff's allegations fail to show that any right protected under the Constitution and laws of the United States has been violated.

In light of the foregoing, it is

ORDERED THAT the motions of the defendants for dismissal be, and the same hereby are granted; plaintiff's motion to compel dismissed as moot.

So ordered.

/s/ James G. Carr
James G. Carr
United States District Judge

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED AND FILED AUGUST 20, 2003

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 01-4189

CINDY L. NAETHING,

Plaintiff-Appellant,

v.

LEE COVINGTON, Director, Ohio Department of Insurance; AMERICAN GENERAL LIFE AND ACCIDENT COMPANY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Before: GILMAN and GIBBONS, Circuit Judges; and JORDAN, District Judge.*

PER CURIAM. Cindy Naething filed an action under 42 U.S.C. § 1983 against American General Life and Accident Insurance Company ("AGLA") and Director Lee Covington ("Director Covington") of the Ohio Department of Insurance

---

* The Honorable Leon Jordan, United States District Judge for the Eastern District of Tennessee, sitting by designation.

claiming entitlement to proceeds from life insurance policies issued to Martin Hampton and seeking production of the policies and related canceled checks. Prior to filing her complaint in district court, plaintiff filed an action in Ohio state court seeking discovery and claiming benefits under the policies. The Ohio court ruled in 1995 that plaintiff had received all the discovery to which she was entitled and that she was not entitled to benefits under the insurance policies. Plaintiff filed her complaint in district court on August 28, 2001. Defendants each filed a motion to dismiss. The district court granted both motions. It held with regard to AGLA that the complaint was barred by the applicable statute of limitations and that AGLA is not a state actor and therefore cannot be sued under § 1983. As to Director Covington, the district court held that the complaint failed for want of specificity to state a claim because plaintiff's allegations of misconduct and conspiracy were conclusory and thus insufficient. The court further held that the complaint failed to sufficiently allege that a right protected under the Constitution or laws of the United States had been violated, a requirement for a § 1983 action.

For the reasons articulated by the district court, we agree that the claims against AGLA are barred by the statute of limitations and that because AGLA is not a state actor, a claim under § 1983 can not stand. We further agree with the district court that the claims against Director Covington fail for a lack of specificity and that the complaint fails to allege sufficiently that a right protected under the Constitution or laws of the United States has been violated. Having studied the record on appeal and the briefs of the parties, we are not persuaded that the district court erred in dismissing plaintiff's

case. Because the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out by the court in its opinion and order entered October 24, 2001.

FEB 13 2004

(2)

In The
Supreme Court of the United States
No. 03-824

CINDY L. NAETHING

Petitioner,

-v.-

LEE COVINGTON, Director
AMERICAN GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY, *et al.,*

Respondents.

On Petition For Writ of Certiorari to The
United States Court Of Appeals
For The Sixth Circuit

REPLY BRIEF FOR PETITIONER CINDY L. NAETHING

Cindy L. Naething Pro se:
P.O. Box 50250
Bowling Green, Kentucky 42102
Phone No. 817-689-6925

REPLY BRIEF FOR APPELLANT

Appellees have stated that they paid the death benefit to Sandra Hampton in the amount of $15,048.43. on September 30,1991. But what they have neglected to mention is the fact that Sandra Hampton was not the legal beneficiary on that insurance policy at the time of Martin Hampton's death. That I was the beneficiary on that policy just four days before Martin's demise. The change form that was sent in illegally was provided in petitioner's complaint with the district court to show the obvious forgery on that policy.

Appellees seem to want to continue in justify and ignore their knowledge of knowing that appellant was indeed the beneficiary on these policies prior to Martin Hampton's death by using the Court rulings against me. Being well aware of why to this day I have never received the discovery entitled to. If petitioner would have received the discovery she was entitled to as being the beneficiary on the policies at one time before the fraud, she would of not have to live another eight, nine years of this nightmare. If there would have been a hearing or some sort of justice with the United States District Court or the United States Court of Appeals for this person to further prove her allegations, this would not be going On to this day.

It should be stressed and not overlooked in appellees responsive brief that their main and only defense is the previous court orders that can be easily used against me. As will be noticed also there is no defense as to why petitioner has not ever received the discovery she was entitled to. There is no defense or explanation as to why those policies and cancel checks have not been provided to any of these justices.When petitioner has provided proof of being the beneficiary at one time.

Is appellee ignoring and now trying to get out of the responsibility in not providing these documents in all of these years for me to prove the fraud issues. Are they completely just ignoring that in all of these briefs since the complaint filed on August 28,2001, there has been no mention of the communications with them since the year 1991 thru 2003. Are they ignoring that petitioner has much proof as to all of the conversations and forgetting that she was advised in Aug 1992 by an insurance agent who found Cindy Naething still active in computer as being beneficiary on policy 130009536 in the amount of $300.000. Are they just forgetting that this agent was communicating with me that the Company told him they intended in getting all the proper claim forms sent to me, so that I could receive my proceeds. How could this be ignored? A fact in August and September 1992. Once again facts that have not even been previously mentioned.

Yes, petitioner did file her complaint in the district court of Ohio in August 2001 because of no other alternative. And as explained in petitioners brief why the Ohio Department of Insurance was also named because of the misuse of their power and the misleading and representation on their behalf, and the participation they took in preventing me from obtaining these documents.

On page 6 of appellees brief stated the latest date mentioned anywhere in petitioners complaint is April 1994. Simply untrue. Once again overlooked and completely ignored issues. On page 21 thru 23 of appellants petition was further detail in some of the communications with the Ohio Department of Insurance. Is this all not just a grasping at straws to discredit a person that could not be more alone in all of this?

Further petitioner's complaint stated that there had been many communications in all these years that was far from ended in the year 1994. And further evidence to the facts. Communications that could have easily been proven. Evidently all of this was completely ignored by not only the justices but the defendants also.

---

1. Petitioner would like to bring to the United States Supreme Courts attention incase it has not already been noticed that page 2 of appellees brief just had to bring to this courts attention the simple mistake made in petitioners brief about her appendix. With very good knowledge on their part that they have not exactly been competing with another attorney in all of these pleadings.

Overlooked or misapprehended one in appellees responsive brief is the critical issue of this being a fraud case. And have been aware of no later than the last of September 1991. At least on the one policy. With knowledge there was also another policy that had Cindy Naething as the beneficiary on, but has also been in all of these years involved in the cover up of this one. Instead of getting these proper claim forms sent to me like I was advised at the end of August 1992. Avoided and let this continue. No matter how hard I was also trying to communicate with them.

REASONS FOR ALLOWING THE PETITION

The eight questions presented in petitioners petition where very precise and to the point. The questions did identify legal error in the Sixth Circuits opinion. And it is not a matter of petitioner disagreeing with the state and federal court rulings below. It is a matter of the continuous cover up of corruption that has occurred for close to thirteen years now, mainly due process of law.

Appellees also know that this has been a classic case from the beginning that a person has been so disadvantage by the law. They themselves even questioned me a time or too. Why had the state department of insurance not done anything? Why did none of the investigators or attorneys you hired do any thing? And yes petitioner does allege that the district and appellate judges denied her of her constitutionally invested rights. And ignored the facts put before them that Cindy Naething at one time was once the beneficiary on these two insurance policies before the fraud. While she was begging them to at the least obtain these documents entitled to, as at one time being the beneficiary.

The petitioner strongly feels that the Sixth Circuit decisions where to protect these too entities against the truth coming out about the clear cover up in a fraud case by preventing petition any further procedures that where due to her. By not at the very least, requesting these documents to see whether her allegations where true or false. Petitioner feels the District and Appellate Courts took advantage of a somewhat helpless person in believing she would not be capable of pursuing these issues.

Even though petitioner as stated in her petition never expected these orders especially from the Sixth Circuit Court of Appeals. It is almost like any more, a person has had to become accustom to the injustice after twelve years of it. Another reason petitioner not only respectfully urges this honorable to see through the corruption that has occurred in this case of not only fraud, but the big time conspiracy that has taken place in preventing me from proving it. But hopes and prays some action is taken in putting a halt to it all. So that this person here can regain a normal life. A remedy well over do and deserved.

1. **The Sixth Circuit Incorrectly Affirmed The District Court's Determination That Petitioner's Claims Are Barred By The Doctrines Of Collateral Estoppel And Res Judicata.**

Petitioner not only had given examples of the conspiracies that where taken place in the 1995 Richland County Court action. The misrepresentation she had received by the lady at legal aid in her complaint with the district court. But the involvement the State Department of Insurance had in that case. One of the parties who forced me with no other alternative but to file that complaint in the courts in the first place. Because of not doing what they promised in March 1994. The trouble is then at that time petitioner was not aware in 1995 of the severity in the Ohio State Department of Insurance's involvement in this dragging out. Mainly with all the people continuing to advise me to keep contacting the State. Keep contacting the Company.

The Sixth Circuit District Court did error in its determination that the petitioner's claims are barred by doctrines of collateral estoppel and res judicata. As stated in petition on page eleven genuine issues of material fact remained for adjudication. And so far as the latches concerned, it has repeatedly held that mere lapse of time does not constitute latches. One last time petitioner was entitled to those documents she has been deprived of. The guaranteed invested property right so violated under the due process clause of the Federal Constitution Fourteenth Amendment.

Without rehashing over and over again what has already been provided in the petition that there was a person in desperate need of some justice in this case that a person has tried so many times to obtain. Each of these defendants knows as well as I do and the courts why this has continued and no one has put a halt to it.

Each of these defendants are also aware of all that has been done to me and why. They are aware of knowing this has been a severe violation of my civil, federal, and constitutionally invested rights according to the federal constitution that they have been involved in depriving me, but let it go as far as the District Court and then the Sixth Circuit Court of Appeals knowing they would more than likely get by with denying and not provide the courts with these documents. Also subverting the legal rights and protections quaranteed to all citizens.

And yes the Sixth Circuit has departed from the accepted and usual course of judicial proceedings. What else may this be called? First after ten years of injustice and petitioner bringing her complaint to the district court the judge dismisses her complaint untimely. Cut me completely off at a time of brutal need, no further procedures. As all explained in petition. Both of these justices ignored the fraud issues in this case. Ignored the fact petitioner was at one time beneficiary on these policies. Ignored the fact that petitioner did have more material evidence that could be provided. Denied petitioner any further procedures what so ever. Ignored their duties to me according to the constitution of laws. Federal Constitutional Rights.

Petitioner in this reply brief is only trying to get this honorable court to see that the responsive brief, the very unexpected responsive brief appellant received not until Wednesday morning Feb 11, 2004. In which did not leave appellant a whole lot of time to respond, and so desperate to receive some justice over this. Knowing that the sooner replied, the better. This reply brief is not to repeat what has already been said in petition. It is to defend the lies that I was not expecting to continue. Any one would have been able to see in all of these filings with the courts petitioner had been trying to not mention any of the communications with AGLA. They also know all the reasons why for this.

One last issue that does need responded to is the appellees stating petitioner has not alleged that the State of Ohio had any involvement whatsoever, in AGLA'S decision to pay Sandra Hampton the death benefits. No. 1. How could petitioner possibly know that answer? It is not like the State of Ohio would ever admit if they where involved in those proceeds being paid to the improper beneficiary. All petitioner knows for fact is she was the beneficiary on both of these policies. That the proceeds to that policy where paid to the improper beneficiary. Even though claims where made both with the Insurance Co. and the State Department of Insurance. Only they know what there communications where with each other. And of course all I was told later. Along with what ever happen to the proper claim forms I was to be provided on policy 130009536 in Aug 1992. Issue that cannot be denied and can be proven.

CONCLUSION

For all the foregoing reasons and reasons appellant had in her petition. Petitioner respectfully request that this Honorable Court except this Petition. And realize that every last allegation made could not be any closer to the truth of this case. That once again petitioner has not had the opportunity to further prove, like previous.

Respectfully submitted,

Cindy L. Naething Pro se:
P.O. Box 50250
Bowling Green, Kentucky
42102
Phone no. 817-689-6925

Supreme Court, U.S.
FILED
APR 1 - 2004
OFFICE OF THE CLERK

(3)

In The
Supreme Court of the United States
No. 03-824

CINDY L. NAETHING
Petitioner,

-v-

LEE COVINGTON, Director
AMERICAN GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY, *et al.,*

Respondents,

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

PETITION FOR REHEARING
CINDY L. NAETHING

Cindy L. Naething Pro se:
P.O. Box 50250
Bowling Green, Kentucky 42102
Phone No. 817-689-6925

PETITION FOR REHEARING

The Petitioner, CINDY L. NAETHING, moves this Court to reconsider its decision of March 8, 2004 denying Cindy Naething's petition for writ of certiorari. Petitions for rehearing of denials of petitions for certiorari are permitted when limited to "other substantial grounds not previously presented." Rule 44.2, Rules of the Supreme Court.

The question presented herein was not previously presented.

This question presents substantial ground for relief.

ADDITIONAL CONSTITUTIONAL PROVISIONS INVOLVED

This case involves, in addition to the authorities already cited in the petition for certiorari, the following provisions of the United States Constitution:

Article I, 10 which says:

No State shall... pass any Bill of Attainder, ex post facto Law or law impairing the Obligation of Contracts, or grant any Title of Nobility.

And the Fifth Amendment which says:

No person shall... be deprived of life, liberty, or property, without due process of law;...

Petitioner must bring to this court's attention now, that she never expected the response brief she received from the defendants American General Life & Accident Insurance Co. It appears at this point that all the attempts on my part in trying to communicate with the company have not been greatly appreciated.

There have been starting with a letter on October 8, 2001. up through December 20, 2003. approximately nineteen letters written

to the company, and they are well aware why. Last thing petitioner expected was to all of a sudden after two years of once again trying with them was to receive a letter from them in January 2004 certified also stating:

Dear Ms. Naething:

Your most recent letter to Rod Martin has been referred to me for response.

Your case is currently pending before the U.S. Supreme Court. It is, therefore, not appropriate for you to correspond directly with a party to this action. Any thoughts you feel the need to express concerning American General should be directed to Michael S. Gordon of Vorys, Sater, Seymour and Pease or to the court itself. Do not attempt further communications with Mr. Martin or any other management employee of American General. Any such correspondence will be forwarded directly to me and will not be seen by Mr. Martin or your intended recipient.

In addition, you were provided a trespass notice by Mark Caldwell, Director of Corporate Security. As such, you have been put on notice that any attempt by you to visit the Houston, Nashville, or any other office of American General will result in your immediate arrest for trespass.

Sincerely,

Michael J. McKierman

Therefore, since it seems that American General is in no hurry to provide me with some relief in this matter. Maybe it is time I insist on it. If they want to continue and ignore their responsibility in this case. This court should resolve the conflicting standards by granting certiorari and reviewing this case in its entirety. And once again realize all this petitioner here was requesting was the documents that long ago would of relieved her of much more suffering.

[* 281] Sec. 8 of No. 1. Sts. 1874, provides that "no insurance company organized under the laws of this State shall do business in this State, until it has filed with the Secretary of this State a written stipulation agreeing that any legal process affecting the company, served on either of the insurance commissioners, shall have the same effect as if served personally on the company in this state. So long as any liabilities of the stipulating company to any resident of this State continue, such stipulation cannot be revoked or modified. Service of process according to the stipulation aforesaid shall be sufficient service on the company."

We assume that such stipulation as is required by this act was dully filed with the Secretary of this State, and that the writ was served upon one of the insurance commissioners according to the provisions of the said act. And it is real clear this company has many said offices doing business in this State.

Further, a state incurs the obligation, under the due process clause of the Federal Constitution's Fourteenth Amendment, to provide meaningful, backward-looking relief to rectify any unconstitutional deprivation when it places a taxpayer under duress. *Id.*, at 51-52. State law may provide relief beyond the demands of federal due process, *id.*, at 52, n. 36, but under no circumstances may it confine petitioner to a lesser remedy, see *id.*, at 44-51. In the case of *Henry Harper Et & Al v. Virginia Department of Taxation 509 U.S. 86.* Is the same issues as this one. Petitioner was deprived of this remedy due to her for many years.

*The system used to condemn these organizations is bad enough. The evil is only compounded when a government employee is charged with being disloyal. Association with or membership in an organization found to be "subversive" weighs heavily against the accused. He is not allowed to prove that the charge against the organization is false. That case is closed; that line of defense is taken away.The technique of quilt by association was used in the prosecutions at Nuremberg n4 does make it [*179] congenial [***858] to our constitutional scheme. Guilt under our system of government is personal. When we make vicarious we borrow from systems alien to ours and ape our enemies.*

Those short-cuts may at times seem to serve noble aims; but we depreciate ourselves by indulging in them. When we deny even the most degraded person the rudiments of a fair trial, we endanger the liberties of everyone. We set a pattern of conduct that is dangerously expansive and is adaptable to the needs of any majority bent on suppressing opposition or dissension.

In this case of mine before the United States Supreme Court in requesting this whole case be reviewed because of the severity of the deprivation of my Constitutional rights that has continued into the Sixth Circuit and Court of Appeals in the State of Ohio who afforded no ground for deciding that the action was not arising under the Constitution and laws of the United States.

"For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for dismissal for want of jurisdiction." *Bell v. Hood, 327 U.S. 678, 682 [**701]* See also *Binderup v. Pathe Exchange, 263 U.S. 291, 305-308.*

Also is the Court at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth or what is declared... [It can] inquire whether the exigency still existed upon which the continued operation of the law depended.

Petitioner would like to add that these courts because of not further trying to find out what a person before them had truly endured. They had no idea of the disadvantage of the law a person has had in being prevented from further proving her allegations. First with all the agencies contacted in trying to obtain assistance. All of the monies paid in trying to get some action. The misrepresentation from the State Department of Insurance. The Richland County Common Please Court. They all had the power to prevent me from getting the proper help legally. Not just from the year 1991 through 1995. But it continued and continued. This is a case where a person could not tell it all with out writing a book. But there was enough stated in the federal courts for me to be provided with further procedures. Due process of law. Constitutional Rights under the Fourteenth Amendment.

In the case of *Alexander v. United States 201 U.S. 117. 26 S. Ct. 356. 50 L. Ed. 686.* This court ordered direct the appellants respectively to appear before special examiner in the case, at the time and place to be designated, and directs each of them to "answer each and every question put to them respectively by counsel for the complainant, the United States of America," and to produce before such commissioner certain books, papers, records, documents, reports and contracts, "for the purpose of their respective examination in said cause, and for use in evidence of the complaint of the United States of America in said examination." And it is ordered that the complainant's counsel shall have the right to inspect the said books, ect., and to introduce them or any of them in evidence; but, except as necessary for such purposes, the books, ect., to remain in the custody of the appellants.

Petitioner in all these years has never been able to obtain these documents, with the knowledge she has been defrauded out of this money. The whole reason she knows that these rulings from the lower courts starting from the one in 1995. Are as false as they could be. Both of these entities have with held this information from me. It has been proven in the communications in 2001 with the State Department of Insurance did indeed have the documents they have hidden from me. And I'am sure American General has kept good track of their records. So when does the judicial system put a halt to this once in for all, so that a person can regain a normal life and not suffer any longer?

According to 10 of the Administrative Procedure Act (APA), 5 U.S.C. 702, which provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency [*733] action within the meaning of a relevant statute, is entitled to judicial relief thereof."

It is real clear in this case that a person has suffered much more than a direct injury. But in a since non repairable injury in twelve years of having to live knowing that this man passes away intends you to benefit in the event of his death. But illegal foul play takes place you are judged, demeaned, slandered, dogged, and lied to.

Conspired against in getting assistance. Financially drained on many occasions. Prevented from getting justice. Run to the ground like some sort of animal. Knowing eventually that people just thought it fine I had my life messed with in hopes for this to continue to drag out like it has. Having such a disadvantage of the law because of certain peoples plan in trying to benefit. To be continuously slapped in the face with no justice over and over again. To even receive a letter from the White House in 1994 stating to keep getting touch with your state and local government officials, which was a joke and which I did up through 2001. Must I continue to explain the grief I've suffered. The worst other than the financial so many times has been the mental cruelty that is not repairable. One last thing every one contacted stating go back to this person or that. Keep trying with all these people and agencies.

This is a case where not only needs to be reviewed on the constitutional merits of the legislation, but a person has standing to seek judicial review under the Administrative Procedure Act.

When a State exercises power wholly within the domain of the state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. This principal has had many applications. It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an "unconstitutional condition." What the Court has said in those cases is equally applicable here,*viz.*, that "Acts generally lawful when done to accomplish an unlawful end, *United States v. Reading Co., 226 U.S. 324, 357,* and a constitutional power cannot be used by way of condition to attain an [*348] unconstitutional result."*Western Union Telegraph Co. v. Foster, 247 U.S. 105, 114.* The petitioners are entitled to prove their allegations at trial. For these reasons, in the case at hand, *Gomillon Et Al v. Lightfoot, Mayor of Tuskegee, Et Al. 364 U.S. 339.* The principal conclusions of the District Court and the Court of Appeals are clearly erroneous and the decision below must be reversed.

"[A] plaintiff may challenge alleged illegal competition when as it pursues (1) a legal interest by reason of public character or contract,...[*153] (2) a legal interest by reason of statutory protection,... or (3) a public interest in which Congress has recognized the need for review of administrative action and plaintiff is significantly involved to have standing to represent the public..." *406 F. 2d, at 842-843. n1*

There would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization, however small or short-lived. If any group with a bona fide special interest could initiate such litigation, it is difficult to perceive why any individual citizen with the same special interest would not be entitled to do so. And where the rights of persons or property are involved, and those rights can be presented under some form of judicial form of proceedings, that court of justice can interpose relief.

While the instant case of mine involves the constitutionality of the deprivation of my Constitutionally protected invested rights that have deprived me many years of the enjoyment of living a peacefull and normal life because of continuing to fight for my rights.

In the case of *Association of Data Processing Service Organizations, Inc. Et Al v. Camp Controller of the Currency, Et Al. 397 U.S. 150 90 S. Ct. 827. 25 L. Ed. 2d. 184 (1970).* The Supreme Court of United States held [*58] Whether anything in the Bank Service Corporation Act or the National Bank Act gives petitioners a "legal interest" that protects them against violations of those acts, and whether the actions of respondents did in fact violate either of those Acts, are questions which go to the merits and remain to be decided below.

We hold that petitioners have standing to sue and the case should be remanded for a hearing on the merits.

Earlier decisions under this statute interpreted the language as adopting the various formulations of "legal interest" and "legal wrong" then prevailing as constitutional of standing. N4 But in *Barlow v. Collins, 397 U.S. 159,* it was also decided that persons had standing to obtain judicial review of federal agency action under 10 of the APA where they had alleged that the challenged action had caused them "injury in fact," and where the alleged injury was to an interest "arguably within the zone of interests to be protected or regulated" by the statutes that agencies were claimed to have violated. N5

The test of the "injury in fact" – required to lay the basis for standing under the Administrative Procedure Act provision (5 USCS 702) that a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of relevant statute, is entitled to judicial review thereof—goes only to the question of standing to obtain judicial review; once this standing is established, the party may assert the interest of the general public in support of his claim for equitable relief.

In the case of *United States v. Causby, 328 U.S. 256 (1946).* Held that the governments actions where unconstitutional and the plaintiff succeeded in such a suit.

This case before the Supreme Court of the United States may seem to be of no importance, and this person here be for them right now might seem like just another burden. But I can say that there have not been many case before the Supreme Court in which the person pursuing their rights had been run to the ground so. Most people who are fighting a case in the courts at least are living normal. They have not lost their means of how to live and where.

This Honorable court should act to create the uniformity intended by Congress and necessary for the efficient and proper conduct of commerce. Because where the rights of persons property are involved, and when such rights can be presented under some judicial form of proceedings, that court of justice can interpose relief.

Petitioner might of not been able to come up with the perfect form of judicial proceedings she is entitled to herself, not being an attorney, not to mention getting so mentally drained and stressed over this continuing. But I'm sure there has been enough presented of the wrong doings been done her for any one with common since to see. And I would hate to think I would have to seek public support over this if there is finally no justice. Or even resort to having to write a book eventually, which would expose a lot of this corruption that has accrued. When it is so unnecessary a person was only requesting once again some simple documents she was entitled to. This top-secret information that has been hidden.

CONCLUSION

For the reasons set forth above, as well as those contained in petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

Cindy L. Naething Pro se;
P.O. Box 50250
Bowling Green, Ky 42102
Phone No. 817-689-6925

March 25, 2004

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 44.2, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is limited to the grounds specified in Rule 44.2.

Cindy L. Naething Pro se: